

Hearing:
August 2, 2005

**THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT
OF THE TTAB**

Mailed:
December 6, 2005
Bucher

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re DNI Holdings Ltd.
(by assignment from Nortech Investments Ltd.)¹

Serial Nos. 76330650

Steven A. Gibson of Santoro Driggs Walch Kearney Johnson &
Thompson for DNI Holdings Ltd.

Michael P. Keating, Trademark Examining Attorney, Law
Office 113 (Odette Bonnet, Managing Attorney).

Before Quinn, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

DNI Holdings Ltd. seeks registration on the Principal
Register, or in the alternative, on the Supplemental
Register, of the mark **SPORTSBETTING INFO** (*standard
character drawing*) for services recited in the application
as follows:

¹ This application was assigned from Nortech Investments Ltd., the original applicant at the time of filing, to DNI Holdings Ltd., a corporation of Antigua and Barbuda, as of August 2005. This assignment was recorded with the Assignment Division of the United States Patent and Trademark Office at Reel 3147, Frame 0465.

"Provision of casino games on and through a global computer network wherein there are no actual monetary wagers; provision of contests and sweepstakes on and through a global computer network; providing a web site on and through a global computer network featuring information in the fields of gaming, athletic competition and entertainment" in International Class 41.²

This case is now before the Board on appeal from the final refusal of the Trademark Examining Attorney to register this designation based upon the ground that the proposed mark is generic for the identified services. In the alternative, the Trademark Examining Attorney contends that in the event this term should be found not to be generic for the identified services, it is certainly merely descriptive, and hence unregistrable on the Principal Register.

Applicant and the Trademark Examining Attorney have fully briefed this appeal, and at applicant's request, a hearing was held before this panel of the Board on August 2, 2005.

We affirm the refusal to register.

The record includes printouts of portions of online websites that offer a peak into the world of online

² Application Serial No. 76330650 was filed on October 25, 2001 based upon applicant's allegation of first use anywhere and first use in commerce at least as early as February 1, 2001.

gambling, or, in applicant's parlance, "gaming." Along with poker tournaments and casino games, many of these gambling websites feature prominently their professional sportsbooks - providing information regarding betting and sports, and offering online wagering services. Through such sites, every Internet user has ready access to, *inter alia*, online sportsbook betting lines on a wide array of collegiate and professional sports.

As seen in this record, applicant, on its own website, identifies itself as follows:

"We are your gateway to the Internet's premier casino and sports wagering sites.

"With the help of our sponsor, SPORTSBETTING.COM, we give you the latest sports news, schedules, stats and more. Simply click on your favorite sport below.

"If you prefer you can check out the latest offshore **sports betting** odds on all major North American and many European sporting events." [**emphasis** supplied]

In his brief, the Trademark Examining Attorney summarizes the balance of applicant's website as follows:

Moreover, the applicant's website contains a section that provides definitions of common terms used in the gaming field The website contains specific information on various sports, such as professional football, professional basketball, tennis, golf and horse racing, and the betting odds for those wishing to place a bet on a particular sporting event or athletic

competition. Applicant also offers a "sports betting newsletter" that is available via electronic mail.

As to the involved designation, the Trademark Examining Attorney takes the position that inasmuch as a term such as "sportsbetting" is a collapsed term (i.e., two words combined without a space between the words), and because the evidence of record demonstrates that each of the constituent words is generic, and because the separate words, when joined, form a combined term having a meaning identical to the meaning common usage would ascribe to those separate words when joined, the Office has established that the term "sportsbetting" is incapable of functioning as a mark for these services. The Trademark Examining Attorney argues correctly that the absence of an entry for a compound term in the dictionary is not controlling on the question of registrability if the Office has demonstrated that the term has a well understood and recognized meaning. In re Gould Paper Corp., 834 F.2d 1017, 5 USPQ2d 1110 (Fed Cir. 1987) [SCREENWIPE generic for cleaning wipes for television and computer screens].

The Trademark Examining Attorney has placed into the record multiple examples from the Internet where these two words are joined together (e.g., "sports betting" or

"sportsbetting") and used generically by applicant and by its competitors, for both sports wagering and for providing information regarding sports and betting. The Trademark Examining Attorney argues that the addition of the term "info," a shortened form or a variant of the generic term, "information," does not create source-identifying significance when appended to the generic term, "sportsbetting." The Trademark Examining Attorney also points out that applicant, in Reg. No. 2940405, disclaimed the terms SPORTSBETTING and INFO apart from the special form mark as shown.³ Finally, even if the applied-for term is found to be not generic, the Trademark Examining Attorney argues that it is merely descriptive and, thus, is barred from registration on the Principal Register.

By contrast, applicant argues that even if it is true that applicant is providing services through its website wherein consumers are actually able to wager money on sports, applicant is not seeking registration for these

³ Reg. No. 2940405 issued to Nortech Investments Ltd. on the Principal Register on April 12, 2005, for services recited as "Broadcasting and netcasting services on and through a global computer network featuring sports events, contests, casino events, athletic events and entertainment events." According to the registration, applicant makes no claim to the terms SPORTSBETTING and INFO apart from the mark as shown.



services. In fact, it specifically limited the claimed services so as to *exclude* monetary wagering. As a result, applicant argues that the Trademark Examining Attorney's refusal to register its mark cannot stand inasmuch as the refusal is based upon genericness of the term for services *not claimed* by applicant.

It has been repeatedly stated that "[d]etermining whether a mark is generic ... involves a two-step inquiry: First, what is the genus of goods or services at issue? Second, is the term sought to be registered or retained on the register understood by the relevant public primarily to refer to that genus of goods or services?" H. Marvin Ginn v. International Association of Fire Chiefs, Inc. 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986). In a proceeding such as this, the genus of the services at issue is determined by focusing on the recital of services in the application itself. Magic Wand Inc. v. RDB Inc., 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) ["Thus, a proper genericness inquiry focuses on the description of services set forth in [the application or] certificate of registration."].

Moreover, the burden rests with the Trademark Examining Attorney to establish that the mark sought to be

registered is generic for the services. In re Merrill Lynch, Pierce, Fenner & Smith, Inc., 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1997). The Office must be able to satisfy both elements of the test as set forth in the controlling precedent of Marvin Ginn, bearing in mind that "[a]ptness is insufficient to prove genericness." See In re American Fertility Society, 188 F.3d 1341, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999). It is incumbent upon the Trademark Examining Attorney to make a "substantial showing ... that the matter is in fact generic." Indeed, this substantial showing "must be based on *clear evidence* of generic use." Merrill Lynch, 4 USPQ2d at 1143. Thus, it is beyond dispute that "a strong showing is required when the Office seeks to establish that a term is generic." In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787, 1788 (Fed. Cir. 1994). Furthermore, doubt on the issue of genericness is resolved in favor of the applicant. In re Waverly Inc., 27 USPQ2d 1620, 1624 (TTAB 1993).

Addressing the first part of the Marvin Ginn genericness inquiry, applicant argues that a proper genericness inquiry focuses on the description of services as recited in the application - not on whether or not applicant's website actually offers sports betting

services. However, even if, for the sake of argument, we were to accept this position, applicant's recitation of services includes providing a website "featuring information in the fields of gaming, athletic competition and entertainment." Hence, the class or category of services described in the application still clearly includes that of providing information regarding sports and betting. See *In re DNI Holdings Ltd.*, ___ USPQ2d ___ (November __, 2005, TTAB) [SPORTSBETTING.COM generic for, *inter alia*, providing an Internet website featuring information regarding sports and betting]; and *In re CyberFinancial.Net Inc.*, 65 USPQ2d 1789 (TTAB 2002) [BONDS.COM generic for identified information services related to investment securities even where applicant does not buy or sell bonds].

We turn then to the second part of the *Ginn* inquiry, namely, whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of services.

Not surprisingly, the Trademark Examining Attorney did not find the combined terms "sportsbetting" or "sportsbetting info" as a single entry in a dictionary. Nonetheless, the Trademark Examining Attorney, in his

appeal brief, analyzes the meaning of the constituent components making up the term "sportsbetting info":

The term "sport" is defined in part as "[p]hysical activity that is governed by a set of rules or customs and often engaged in competitively; a particular form of this activity; an activity involving physical exertion and skill that is governed by a set of rules or customs and often undertaken competitively." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4 ed. 2000) (attached to Final Office Action of August 29, 2002). The term "sports" is simply a variant of the term, and may be defined in part as "of, relating to, or appropriate for sports: *sport fishing; sports equipment.*" *Id.* (*italics* in original). The term "betting" is a variant of the term "bet," which is defined in part as "an agreement usually between two parties that the one who has made an incorrect prediction about an uncertain outcome will forfeit something stipulated to the other, a wager. 2. An amount or object risked in a wager; a stake. 3. One on which a stake is or can be placed: *Our team is a sure bet to win.* *Id.* (*italics* in original). Further, [the] term "info" is a shortened form or variant of [the] term "information," which is defined as "news, facts, or knowledge." CAMBRIDGE DICTIONARY OF AMERICAN ENGLISH (attached to Office Action of September 29, 2003).

We find that these dictionary definitions show that "sports betting" is the equivalent of "sports wagering" or "wagering on sports." We have no doubt but that joining the separate words "sports" and "betting" creates a term that, in context, would be generic for a service that

permits one to wager on sporting events. In this case, the combined term, "sportsbetting," is not greater than the sum of its parts. See Gould, *supra*.

In defining the "relevant public" whose understanding and perception of SPORTSBETTING INFO is critical to our analysis (see Magic Wand Inc., *supra* at 1553), we must include all persons having access to the Internet who might potentially wager on sports. With that definition of "relevant public" in mind, the Trademark Examining Attorney has demonstrated, *supra*, that members of the relevant public see the term, "sports betting" (without the term "info") used in lower-case letters in a generic fashion on applicant's own Internet website [" ... check out the latest offshore **sports betting** odds on all major North American and many European sporting events"].

Moreover, as to the combined term "sports betting" (or its variant, "sportsbetting"), we have no doubt but that the record shows conclusively that members of the relevant public see these terms used interchangeably,⁴ and view both of them as generic, not only for the actual wagering, but also in connection with books and websites providing information about wagering on sports. For example, in the

⁴ "Sports betting odds at the #1 sportsbetting destination on the internet ..." <http://www.1stsportsbetting.com/>

attachments to applicant's response to the fourth Office action (October 21, 2004), one sees the following uses, including usage within book titles:

"Click on a ***Sportsbetting*** Book below for a detailed Description." [Among the titles featured, one sees listed:]
Insights into ***Sports Betting***, by Bob McCune
Sharp ***Sports Betting***, by Stanford Wong
The Basics of Winning ***Sports Betting***, by Avery Cardoza"⁵

Books about ...
Sportsbetting⁶

Sportsbetting Advice
FormBet.com is a no-nonsense
sportsbetting site

Sports Betting Resources:
Sports Betting Articles
Sports Betting Terms⁷
[***emphasis*** supplied]

We note that some websites above use variations on this term with and without a space (e.g., "sports betting" and "sportsbetting"), and sometimes both ways within the same web page.⁸ As a matter of trademark law, "sports betting" is equivalent to "sportsbetting" which in its combined or collapsed form is not greater than the sum of its parts. See In re Gould Paper, *supra*; In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978)

⁵ The URL for this website was not apparent from the record.

⁶ <http://www.gambling-Literature.com>

⁷ <http://www.FormBet.com>

⁸ For example, in the text *supra* at footnotes 4, 5 and 7.

[GASBADGE at least descriptive for gas monitoring badges; three judges concurred in finding that term was the name of the goods]; In re Planalytics Inc., 70 USPQ2d 1453 (TTAB 2004) [GASBUYER merely descriptive of "on-line risk management services in the field of pricing and purchasing decisions for natural gas"]; In re Orleans Wines, Ltd., 196 USPQ 516 (TTAB 1977) [BREADSPRED descriptive for jams and jellies that would be a spread for bread]; and In re Perkin-Elmer Corp., 174 USPQ 57 (TTAB 1972) [LASERGAGE merely descriptive for interferometers utilizing lasers].

It is instructive to compare this set of circumstances (i.e., in the instant record, as to the combined term "sportsbetting") with the third-party use of "steelbuilding" in In re Steelbuilding.com, *supra*. By contrast with the instant case, our principal reviewing Court in Steelbuilding.com found an absence of any evidence of use of "steelbuilding" as one word.⁹ In the case at

⁹ The Court in Steelbuilding.com also found that joinder of the separate words "steel" and "building" with the TLD ".com" created a "formulation" that, in context, could be perceived by the relevant public as meaning either "steel buildings" available via the Internet or "the building of steel structures" via an Internet website. While not using the term "double entendre," the Court's reasoning in Steelbuilding.com suggests a non-descriptive connotation (perhaps not unlike SUGAR & SPICE for bakery products, THE SOFT PUNCH for noncarbonated soft drink, and NO BONES ABOUT IT for fresh pre-cooked ham). The Court found that simply joining the separate words "steel" and "building" and the TLD ".com" does not necessarily create a

hand, assessed under American Fertility, *supra*, we have ample evidence of use of the designations "sports betting" and "sportsbetting" by applicant and by its third-party competitors. All of this evidence persuades us that members of the relevant public, i.e., persons with Internet access who might wager on sports, primarily perceive "sports betting" and "sportsbetting,"¹⁰ usually set forth in lower case letters, as generic. This is true even if applicant should be able to demonstrate (which it has not) that a growing subset of the gaming public may draw an association between applicant and the services offered at one of its website. In re American Institute of Certified Public Accountants, 65 USPQ2d 1972 (TTAB 2003) [the term CPA EXAMINATION is generic for "printed matter, namely, practice accounting examinations; accounting exams; accounting exam information booklets; and prior accounting examination questions and answers," even if a sizable subset of that public draws an association between the

compound term that would be generic for "computerized online retail services in the field of pre-engineered metal buildings and roofing systems." Specifically, given the interactive design feature of that applicant's goods and services, the Court concluded that STEELBUILDING could also refer to "the building of steel structures."

¹⁰ The Trademark Examining Attorney's evidence of record also shows that the term "sportsbetting" is used by a number of third-party competitors in combination with other words, alpha-numerics, names and symbols within their respective domain names.

AICPA and the UNIFORM CPA EXAMINATION.]. Hence, if the genus of services is construed to include providing for wagering on sports, "sports betting" (and "sportsbetting") is clearly generic for such services.

However, if, as applicant argues, we explicitly exclude applicant's "sports betting services" from the genus of services in the first part of the Marvin Ginn genericness inquiry, we note that whether one looks closely at applicant's website or the websites of third-party competitors, much of the discussion about "sports betting" (or "sportsbetting") focuses on the need to gather and analyze as much information as one can to become knowledgeable about the particular sport on which one is wagering. Hence, when it comes to the activity of "sports betting," we find that the information piece of applicant's recited services is inextricably tied into the actual betting. This linkage is not unique to the field of gaming. This tying together of information and the underlying activity is analogous, for example, to our finding that the word "bonds" (and hence the mark BONDS.COM) is generic for information services related to debt instruments and other related investment securities. CyberFinancial.Net, *supra*.

We turn then to the evidence in this record of usage of the entire term, "sportsbetting info." The Trademark Examining Attorney argues that based upon a Google search report placed into the record, he has demonstrated that it is not at all unusual for other sportsbook entities competing with applicant to use the terms "sports betting info" or "sportsbetting info" in a generic fashion on their web pages in describing their respective information services. The Trademark Examining Attorney's Google search of the exact term, "sportsbetting info," retrieved more than five-thousand hits, of which he printed out for the record four pages of summary hits for results #1 through #40.

However, as pointed out by applicant, the evidence actually placed into the record includes only the four-line summary hits from the first forty hits of this Google search - not copies of any of the actual web pages. In response to this showing, applicant noted that by the time it filed its responses and/or briefs, many of these forty referenced websites were inactive, or automatically redirected one to a new and different website. In several cases of extant websites, applicant did provide the associated web pages. Applicant is correct in noting that

in some cases, the entire term, "sportsbetting info," appears nowhere on the referenced pages of the cited websites:

An explanation of **sports betting** including money line wagers ... the **Sports Betting** Tutorial discusses money line wagers ... ¹¹

Welcome to Basketball **Sports Betting** Online

...

LIVE **SPORTS BETTING** LINES AND ODDS ...

Advantage **Sports Betting** - ...

Sports Betting Football - ...

Sports Betting Football Online - ...

Sports Betting Basketball - ...

Las Vegas **Sports Betting** Online - ...

Sports Betting Links ... ¹²

[*emphasis* supplied]

Although these actual web pages, as submitted by applicant, do not contain the entire term "sportsbetting info," the highlighted portions demonstrate again the usage of the term "sports betting" in its generic sense.

On the other hand, in at least one website summarized by the Trademark Examining Attorney and then printed out by applicant, a variation of the term "sportsbetting info" (e.g., as three different words, "Sports Betting Info") did

¹¹ <http://www.gambling.ctr.co.uk>

¹² <http://www.basketballsportsbettingonline.com>, which was subsequently transferred to <http://www.lasvegassportsbetting.com>, both of which also have "sportsbetting" within their domain name.

appear on the web page as submitted, and we have no reason to believe this is a reference to applicant's services:

Sports Betting Info can help anyone who is curious about laying money down on sports.¹³
[**emphasis** supplied]

Otherwise, however, we agree with applicant that the one-line heading in a Google hit summary, and the following two lines containing a smattering of broken text drawn from somewhere within a website are not persuasive evidence of third-party usage:

Rate **Sportsbetting info** at Ultimatecapper ...
¹⁴

This site has a lot of good **Sportsbetting info** ...¹⁵
[**emphasis** supplied]

This is true because it is not clear to us exactly how Google generates these headings and accompanying summary text. Inasmuch as this term may well be taken from metatags, embedded links or other HTML sources for the associated web pages, these headings and summaries do not provide probative evidence that these terms actually appear in readable text in the pages referenced therein.

Despite this dearth of usage by third parties of this entire term, we agree with the Trademark Examining Attorney

¹³ www.apexsportsbook.com/nfc

¹⁴ <http://www.casino-sportsbetting-directory.com>

¹⁵ <http://www.nflbestline.com>

that the several dictionary entries in the record demonstrate that "info" is clearly a shortened form of the term "information." The term "info" is without a doubt generic for a website featuring information services. The term "info" is disclaimed in a variety of third-party registrations for services similar to those offered by applicant. Moreover, in the ordinary course of interpreting the English-language construction of "sportsbetting info," the term, "sportsbetting" is a generic adjectival term clarifying exactly what type of information one can anticipate gleaning from this online service. The record shows that each of these constituent terms is generic, and together this compound term has a meaning identical to the meaning common usage would ascribe to those words as a whole. Specifically, we find that "sportsbetting info" is generic for an online service that provides information on sports wagering. Hence, we find that the Office has established that the term "sportsbetting info"¹⁶ is incapable of functioning as a mark for these services. See In re Gould Paper, *supra*.

¹⁶ In its response to the fourth Office Action (October 21, 2004), applicant argues that another possible interpretation of the term "info" in this composite mark is that of "a new top level domain name." Given that applicant filed on the same day for four different "biz" marks drawn similarly to its four companion "info" marks [Serial Nos. 76330657 - 663], one might

Having found the applied-for matter (the term "sportsbetting info") generic for the third portion of the recitation of services in International Class 41 herein, namely, 'providing information regarding sports and betting,' we hold that registration is appropriately denied for the entire class of goods if the term is generic for any of the services for which registration is sought. See In re Quik-Print Copy Shop, Inc., 616 F.2d 525, 205 USPQ 505, 507 (CCPA 1980). Accordingly, it should not be necessary to discuss further whether the term "sportsbetting info" is generic as used in connection with the first two services recited in this application, e.g., casino games for fun, contests and sweepstakes, etc.

Nonetheless, we turn briefly to applicant's "alternative position" requested in its appeal brief, namely, that in the event we should find SPORTSBETTING INFO generic for the third portion of the recitation of services, applicant should be permitted at such a late stage of this proceeding to amend the recitation to delete

assume that in 2001 applicant was desirous of Lanham Act protection for composite marks suspiciously similar to anticipated domain names (i.e., without the "dot") employing what were then newly-announced top level domain names, e.g., << www.sportsbetting.info >> or << www.sportsbetting.biz >> . However, even if the record demonstrated that this were the dominant perception of the relevant public, under extant Board precedent, this would still not remove the genericness bar to registration herein. See In re DNI Holdings Ltd., *supra*.

this portion. Applicant cites no authority for our accepting this position, and we know of none. An applicant may, of course, continue to pursue registration on the Principal Register with an alternative amendment to the Supplemental Register (as applicant has done herein), or by arguing that a term is not merely descriptive under Section 2(e)(1) while also, in the alternative, demonstrating acquired distinctiveness under Section 2(f) of the Lanham Act. However, if the Board were to allow alternative positions on various permutations of listed goods and/or recitations of services within International Classes that may run afoul of one or more sections of the statute, the Board would essentially be reduced to panels of super-examiners, issuing advisory opinions in an unmanageable volume of appealed cases.

As to the arguments by the Trademark Examining Attorney that applicant has admitted to the fact that these individual components are not registrable by disclaiming them in an earlier registration (see footnote 3, *supra*), we recognize that §6 of the Lanham Act permits an applicant to disclaim matter voluntarily - regardless of whether the matter is registrable or unregistrable. See In re MCI Communications Corp., 21 USPQ2d 1534 (Comm'r Pats. 1991).

Applicant's earlier statement that it made no claim to the exclusive right to use the terms SPORTSBETTING INFO apart from the composite mark as shown means that insofar as that particular registration is concerned, no rights are being asserted in the disclaimed component of the mark standing alone. It is clear that a disclaimer does not preclude registrant, as a matter of law, from later demonstrating in another application, for example, rights in the disclaimed matter if it can show that the disclaimed words have, with time and use, become distinctive of such goods or services. See Section 6(b) of the Trademark Act, 15 U.S.C. §1056(b); See also, *In re K-T Zoe Furniture Inc.*, *supra* at 1789. However, it has long been held that the disclaimer of a term constitutes an admission of the merely descriptive nature of that term, as applied to the goods or services in connection with which it is used, and an acknowledgment of the lack of an exclusive right therein at the time of the disclaimer. See *Quaker State Oil Refining Corp. v. Quaker Oil Corp.*, 453 F.2d 1296, 172 USPQ 361, 363 (CCPA 1972). See also, *In re Interco Inc.*, 29 USPQ2d 2037, 2038 (TTAB 1993).

Finally, we agree with the Trademark Examining Attorney that in the event **SPORTSBETTING INFO** should be

found not to be generic for the identified services, it is certainly merely descriptive. By definition, if merely descriptive, it is not inherently distinctive, and applicant has made no attempt to demonstrate acquired distinctiveness for this matter, so as to permit registration on the Principal Register under Section 2(f) of the Act.

Decision: The refusal to register the designation **SPORTSBETTING INFO** as incapable of registration under Section 23 of the Lanham Act is hereby affirmed, and registration to applicant is denied. In the alternative, should the applied-for term be found not to be generic for the identified services, it is merely descriptive. Hence, in the absence of a showing of acquired distinctiveness, the refusal to register on the Principal Register based upon Section 2(e)(1) of the Lanham Act is hereby affirmed.